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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHNNY MIZE,

Defendant.

2:06-cr-0210-LDG-LRL

ORDER

Defendant Johnny Mize has filed a motion to suppress statement (#465, opposition #470, reply #480). The magistrate judge conducted an evidentiary hearing and has issued a report and recommendation that the motion to suppress be denied (#596, objections #613). The magistrate judge's analysis is sound, and the report and recommendation will be adopted, in total.

At one point during Agent Adams' and Detective Kusik's interview of Mize, and after Mize had originally waived his right to remain silent, Mize stated "That's it. I guess – well, I guess I can't help you guys. I thought maybe –." According to Mize, these words, coupled with Kuzik's immediate interruption and disagreement with whether he thought Mize could help them, constituted at that point an invocation of Mize's right to remain silent. As the magistrate judge determined, this was not an unambiguous invocation. Furthermore, contrary to Mize's suggestion, the magistrate judge considered the entire context of the statement and, in fact, earlier recited Mize's verbatim reluctance to be "a rat." Considering the context of the interview, the magistrate


1 judge was correct in finding that Mize's statement was a bargaining effort, and not an attempt to
2 terminate the interview.

3 The magistrate judge was also correct in rejecting Mize's contention that his statements
4 were involuntary. As the magistrate judge concluded, the agents' statements either did not
5 constitute promises or, under the circumstances, did not rise to the level of sufficiently overbearing
6 Mize's will. With reference to the alleged promise by the agents not to disclose Mize's identity,
7 they kept their word to the extent of their capacity, and, in any event, such an assurance was not so
8 manipulative or coercive to deprive Mize of his ability to make voluntary and independent
9 statements during the interview. Finally, the magistrate judge's Rule 403 analysis is well-
10 reasoned.

11 THE COURT HEREBY ORDERS that the magistrate judge's report and recommendation
12 (#506) is ADOPTED, and defendant's motion to suppress statement (#465) is DENIED.

13 THE COURT FURTHER ORDERS that the status hearing on the objections to the report
14 and recommendation scheduled for February 11, 2008, is hereby VACATED.

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16 DATED this 31 day of January, 2008.

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19 Lloyd D. George
United States District Judge